

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 55, Requests for Reconsideration and Contested Case Hearings; Public Comment, without changes. Any updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking.

This review of Chapter 55 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 55 addresses avenues for public participation in the permitting process for water, waste, and air applications. Specifically, Chapter 55 contains procedures and processes relating to requests for contested case hearings and requests for reconsideration. Chapter 55 also addresses procedures and processes related to public meetings and the submittal of public comments.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 55 continue to exist. The rules are needed to ensure that members of the public are provided the opportunity to participate in the permitting process for water, waste, and air applications. The rules implement Texas Water Code, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules necessary to carry out its powers and duties; §5.105, which establishes the commission's authority to set policy by rule; §5.115, which establishes the commission's authority to adopt rules for notices of application; Chapter 5, Subchapter M, which establishes environmental permitting procedures; §26.011, which establishes the commission's authority to adopt rules for the control of waste discharges or impending waste discharges affecting the quality of water in the state; and §26.028, which requires that notice of applications for water quality permits, permit amendments, and permit renewals be provided to persons who in the judgment of the commission may be affected by the applications; Texas Health and Safety Code, §361.024,

which establishes the commission's authority to adopt rules for the control of solid waste; §361.082, which establishes the commission's authority to adopt rules for notice and hearing for hazardous waste permits; §382.017, which establishes the commission's rulemaking authority under the Texas Clean Air Act; §382.056, which establishes the commission's authority to adopt rules regarding notice and public comment; and §401.051, which establishes the commission's authority to adopt the rules for control of radiation; and Texas Government Code, §2001.004, which requires state agencies to adopt procedural rules; and §2001.052, which prescribes the contents of notice for contested case hearings.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 55. Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-022-055-AD. Comments must be received in writing by 5:00 p.m., June 16, 2003. For further information or questions concerning this proposal, please contact Jill Burditt, Policy and Regulations Division, at (512) 239-0560.

TRD-200302722

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 2, 2003



The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 80, Contested Case Hearings, without changes. Any updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking.

This review of Chapter 80 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. A review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 80 governs the referral, oversight, and management of contested case hearings by the State Office of Administrative Hearings (SOAH) subject to the commission's jurisdiction under the Texas Water Code (TWC), the Texas Health and Safety Code (THSC), and the Texas

Local Government Code. Subchapter A provides a general framework for the oversight of judges, referrals to SOAH, representation at hearings, the conduct and decorum of participants, consolidation and severance of issues and parties, ex parte communications, the burden of proof, audio recording of proceedings, witness fees, transcriptions of hearings, withdrawing of an application, the form of pleadings, amended and supplemental pleadings in enforcement cases, motions, and lost records and papers. Subchapter C provides the procedures in contested case hearings, including: remand matters to the executive director, the procedure before a preliminary hearing, preliminary hearings, sanctions, executive director party status in permit hearings, designation of parties, appearances, the rights of parties, the order of presentation, the administrative record, continuances, agreements, public comment in direct referral cases, evidence, the specific admissibility of evidence for concrete batch plants, objections, interlocutory appeals and certified questions, oral arguments, the submission of findings of fact and conclusions of law, and summary disposition. Subchapter D deals with the discovery process and the issuance and use of subpoenas. Subchapter F addresses post hearing procedures, including: proposals for decision, settlement of enforcement cases, waiver of rights to review judge's proposal, pleadings following proposals for decision, amending the proposal for decision, the scheduling of commission meetings, the oral presentation before the commission, reopening the record, decisions, the commission's decision after a contested enforcement case hearing, motions for rehearing, decision final and appealable, motions for rehearing not required in certain cases, the appeal of final decisions, appeals of enforcement orders, and the cost of record on appeal.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission has conducted a preliminary review of the rules under Chapter 80 and has determined that the reasons for adopting these rules continues to exist. These rules are needed to implement TWC, Chapters 5, 7, 11 - 13, 26, 27, 37, 49 - 51, 53, 54, 58, 59, 65, and 66; THSC, Chapters 341, 361, 366, 382, and 401; Texas Local Government Code, Chapter 375 and §395.080; and Texas Government Code, Chapters 2001 and 2003. The commission invites comments on whether the reasons for the rules in Chapter 80 continue to exist.

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites comments on whether the reasons for the rules in Chapter 80 continue to exist, as well as on any corrections or other revisions that could be considered in the aforementioned future rulemaking.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 80. Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, Mail Code 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-021-080-AD. Comments must be received in writing by 5:00 p.m., June 16, 2003. For further information or questions concerning this proposal, please contact Jill Burditt, Policy and Regulations Division, at (512) 239- 0560.

TRD-200302723

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 2, 2003



The Texas Commission on Environmental Quality (commission) files this notice of intention to review Chapter 328, Waste Minimization and Recycling, and proposes the readoption of Chapter 328, without changes. Any additional updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking.

This review of Chapter 328 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 328 provides for regulations that support the diversion of materials from solid waste streams for reuse and recycling in a sustainable manner that protects the environment, public health, and safety.

Subchapter A contains general, operational, reporting, and record keeping requirements for recycling facilities. Subchapter B provides a reporting format by which to measure progress toward the state's recycling goals, and standards for the calculation of recycling rates, waste stream reduction, and per capita waste generation rates.

Subchapter C establishes procedures and requirements for the sale, transportation, recycling, and disposal of lead-acid batteries. Subchapter D contains regulations for the collection, transport, storage, and recycling of used oil filters not regulated as hazardous waste, including registration and reporting requirements, spill prevention and control, and a ban on landfill disposal. Subchapter E describes eligibility requirements and procedures for the administration of assistance grants relating to household do-it-yourself used oil collection, reuse, and recycling. Subchapter F establishes required procedures for the storage, transportation, processing, utilization, and disposal of used or scrap tires or tire pieces.

Subchapter G establishes target percentages for the manufacture and use of recycled-content newsprint in Texas for the years 1993 - 2000, including requirements for recordkeeping and reporting. The target percentages for the years 1993 - 2000 continue to be effective after the year 2000. Subchapter G also describes the commission's responsibilities regarding data collection and industry consultation in pursuit of these goals, and its authority to adopt mandatory enforcement measures in the event the goals are not reached.

Subchapter H establishes procedures and requirements for the manufacture and distribution of plastic bottles and other rigid plastic containers, specifying a symbol and numerical codes to be imprinted on each container to facilitate recycling.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 328 continue to exist. These rules are needed to implement Texas Health and Safety Code, (THSC), Chapter 361, the Solid Waste Disposal Act; Chapter 371, Used Oil Collection, Management and Recycling Act; and Chapter 369, Plastic Containers.

Subchapter A fulfills the statutory requirement of THSC, §361.119, for the regulation of certain facilities as recycling facilities.

Subchapter B provides a mechanism to gauge progress toward the state's waste reduction and recycling goal, as required by THSC, §361.422, and to be considered in the state's Comprehensive Municipal Solid Waste Management Strategic Plan under THSC, §361.0201.

Subchapter C implements the requirements for the management of lead-acid batteries in THSC, Chapter 361, §§361.451 - 361.454.

Subchapter D fulfills the requirements of THSC, §§371.101 - 371.110, and 40 Code of Federal Regulations Part 279.

Subchapter E implements THSC, §371.023, Grants to Local Governments and Private Entities, in support of used oil recycling.

Subchapter F implements the legal requirements of THSC, §361.112, Storage, Transportation, and Disposal of Used or Scrap Tires.

Subchapter G implements THSC, §361.430, Newsprint Recycling Program, to develop markets and production facilities for recycled-content newsprint; and §361.423, outlining the agency's role as a member of the Recycling Market Development Board.

Subchapter H implements the coding system for plastic containers prescribed in THSC, §§369.001 - 369.003.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 328. Comments may be submitted to Patricia Durón, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-020-328-WS. Comments must be received in writing by 5:00 p.m., June 16, 2003. For further information or questions concerning this proposal, please contact Emily Barrett, Policy and Regulations Division, at (512) 239- 3546.

TRD-200302746

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 2, 2003

Board of Nurse Examiners

Title 22, Part 11

The Board of Nurse Examiners will review and consider whether to re-adopt, re-adopt with amendments, or repeal title 22 of the Texas Administrative Code, part 11, chapter 217, relating to Licensure, Peer Assistance, and Practice. This review is done pursuant to Texas Government Code §2001.039.

The Board will assess whether the reason(s) for adopting or re-adopting this chapter continues to exist. The Advisory Committee on Education (ACE) is reviewing each section of this chapter to determine whether it is obsolete, reflects current legal and policy considerations, reflects current procedures and practices of the Board, and/or whether it is in compliance with chapter 2001 of the Texas Government Code (Administrative Practice Act).

Comments on the review may be submitted in writing within 30 days following the publication of this rule review in the *Texas Register* to Katherine Thomas, Executive Director, 333 Guadalupe, Ste. 3-460, Austin, Texas 78701. Any proposed changes to the sections of this chapter as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption of any repeal, amendment, or re-adoption.

TRD-200302770

Katherine Thomas

Executive Director

Board of Nurse Examiners

Filed: May 2, 2003

Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 63, concerning Promptness of First Payment. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the following rule contained in this chapter continues to exist and it proposes to readopt this rule:

§63.10 - Sanctions for Late Payment

The agency's reason for adopting the following rule no longer exists and therefore, this rule is not recommended for readoption:

§65.5. Quarterly Report

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on June 16, 2003, and submitted to Nell Cheslock, Legal Services, MS 4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

TRD-200302724

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: May 2, 2003

Adopted Rule Reviews

Office of the Secretary of State

Title 1, Part 4

The Office of the Secretary of State has completed the review of Chapters 71, 72-76, 78-81, 83, 87, 91, 93, 95-97, and 101-105. These rules are readopted in accordance with the requirements of the Government Code, §2001.039, which directs state agencies to review and consider for readoption each of their rules every four years. The Office proposed the review of its rules in the January 3, 2003, *Texas Register* (28 TexReg 373). The Office has determined that the reasons for adopting these chapters continue to exist.

The Office has determined to propose amendments to Chapter 71, to revise rules concerning Service of Process, Special Services, and Credit Card Payment Options. An amendment is needed to clarify that entities other than corporations may be served through the Secretary of State. Chapter 71 also will be amended to update the Office's special services and credit card payment policies.

The Office has determined to propose amendments to Chapter 79, concerning Corporations. The amendments will address electronic filing procedures and to revise the rules in accordance with current practice.

The Office has determined to propose amendments to Chapter 80, concerning Unincorporated Business Entities. The amendments will address electronic filing procedures and revise the rules in accordance with current practice.

The Office has determined to propose amendments to Chapter 83, concerning Limited Partnership. The amendments will address electronic filing procedures and revise the rules in accordance with current practice.

The Office has determined to propose amendments to Chapter 87, concerning Notaries Public. The amendments will revise the rules to update mailing addresses and indicate the electronic availability of the notary public forms.

The Office this year made revisions to Chapter 91, concerning the *Texas Register*. The revisions addressed new electronic submission forms and reorganized Chapter 91 subject matter to improve readability.

The Office will propose amendment to Chapter 93, concerning Trademarks. The amendments will address electronic filing procedures and revise the rules in accordance with current practice.

The Office has determined to propose amendments to Chapter 97, concerning Business Opportunities. The amendments will revise the rules to update mailing addresses and statutory citations, and indicate the electronic availability of business opportunity forms.

The Office has determined to propose amendments to Chapter 102, concerning Health Spas. The amendments will revise the rules to update statutory citations and the Internet addresses for health spa forms.

The Office has determined to propose amendments to Chapter 105, Subchapter A., concerning Public Safety Solicitations. The amendments will revise the rules to indicate the electronic availability of telephone solicitation forms.

The Office has determined to propose amendments to Chapter 105, Subchapter B, concerning Veterans Solicitations. The amendments will revise the rules to indicate the electronic availability of telephone solicitation forms.

The Office has determined to propose amendments to Chapter 105, Subchapter C, concerning Telephone Solicitations. The amendments will revise the rules to update statutory citations and indicate the electronic availability of telephone solicitation forms.

No comments were received concerning the proposed review of the following chapters:

- 71. General Policies and Procedures
- 72. State Seal
- 73. Statutory Documents
- 74. Credit Services Organizations
- 75. Automobile Club
- 76. Use of a Deceased Individual's Name, Voice, Signature, Photograph, or Likeness
- 78. Athlete Agents
- 79. Corporations
- 80. Unincorporated Business Entities

- 81. Elections
 - 83. Limited Partnership
 - 87. Notary Public
 - 91. Texas Register
 - 93. Trademarks
 - 95. Uniform Commercial Code
 - 96. Electric Utility Transition Property Notice Filings
 - 97. Business Opportunity
 - 101. Practice and Procedure Before the Office of the Secretary of State
 - 102. Health Spas
 - 103. Membership Camping Resorts
 - 104. Wrestling Promoters
 - 105. Solicitations
- TRD-200302744
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Filed: May 2, 2003



Texas State Soil and Water Conservation Board

Title 31, Part 17

The State Soil and Water Conservation Board readopts without changes, under Title 31, Part 17, Chapter 517, Financial Assistance, Chapter 519, Technical Assistance, Chapter 521, Agricultural Water Conservation, and Chapter 523, Agricultural and Silvicultural Water Quality Management in accordance with Article IX, §167 of the Appropriation's Act.

The proposed review was published in the April 11, 2003, issue of the *Texas Register* (28 TexReg 3090).

No comments were received regarding the adoption of these chapters.

TRD-200302721
James M. Moore
Executive Director
Texas State Soil and Water Conservation Board
Filed: May 1, 2003

